

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NINTENDO OF AMERICA INC.,

Plaintiff,

v.

DOES 1-20, d/b/a, ANXCHIP.COM,  
AXIOGAME.COM, FLASHCARDA.COM,  
MOD3DSCARDS.COM, NX-CARD.COM,  
SXFLASHCARD.COM, TXSWITCH.COM,  
and USACHIPSS.COM,

Defendants.

NO. 2:20-cv-00738-TSZ

DECLARATION OF JACQUELINE  
“LYNN” KNUDSON

Introduction

1. I am over the age of eighteen and not a party to the above-captioned action. I have personal knowledge of the facts set forth below. If called as a witness, I would testify as follows:

2. I am employed as a Senior Program Manager at Nintendo of America Inc. (“Nintendo”). For the past 24 years, one of my primary responsibilities has been overseeing and facilitating Nintendo’s anti-piracy efforts. In that role, one of the things I do is to oversee investigations conducted internally and by third party investigators into the identities and

1 whereabouts of individuals and entities suspected to be engaged in piracy and infringement  
 2 related to Nintendo's products, including those engaged in trafficking in devices designed to  
 3 circumvent Nintendo's technical protection measures on its video game consoles, as well as in  
 4 pirated video. Further, either I or another Nintendo employee, whom I manage and supervise,  
 5 and at my direction, routinely monitor online news sources, websites, online social media, as  
 6 well as other online media frequented by individuals and entities engaged in trafficking and  
 7 piracy. I have developed a deep familiarity with those individuals' techniques and processes, as  
 8 well as with the ways they evade detection and enforcement. Indeed, I am required to maintain  
 9 an understanding of how individuals and entities like these operate.

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 17 3. For the past eight months (and for some of the websites longer), I have been  
 18 working with Nintendo's outside investigators, Jacqueline McMahon at Marksmen Brand  
 19 Protection Services, and with a California-based investigation service, to conduct a multi-  
 20 pronged, international investigation into the websites ANXCHIP.COM, AXIOGAME.COM,  
 21 FLASHCARDA.COM, MOD3DSCARDS.COM, NX-CARD.COM, SXFLASHCARD.COM,  
 22 TXSWITCH.COM, and USACHIPSS.COM. The operators of those sites are collectively  
 23 referred to herein as "Defendants," and their websites as the "Websites."<sup>1</sup> Defendants offer  
 24 devices for sale to the public, the sole purpose of which is to hack the Nintendo Switch and the  
 25 Nintendo Switch Lite video game consoles in order to allow people to play pirated video games.  
 26 Some of the Defendants' Websites also sell memory cards filled with pirated video games.

#### 27 Registration for the Websites

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 29 4. I have attempted to identify the individuals operating the Websites by instructing  
 30 a Nintendo employee to query the WHOIS database—a database maintained by the Internet  
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 43 <sup>1</sup> Since the Complaint has been filed, five of the Defendants have already moved URLs (known as "domain-  
 44 hopping"), and those Defendants are now operating at different URLs. *See infra* ¶ 16. In my experience, domain  
 45 hopping is used to evade detection and enforcement. Reference to Defendants or the domain names in the caption  
 above should be read to encompass both the original URLs and any new URLs.

1 Corporation for Assigned Names and Numbers (“ICANN”)—which is supposed to list the  
2  
3 registrants of domain names.

4 5. ICANN policy provides that registrants of domain names are required to list  
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6 accurate identifying information for inclusion in the WHOIS database.  
7

8 6. I managed a Nintendo employee who was able to locate WHOIS records for each  
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10 of the Websites. True and correct copies of the WHOIS records for the Websites are attached as  
11  
12 Exhibit 1.

13 7. Notwithstanding ICANN policy, those records do not reveal any of the Websites’  
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15 operators. That is because the Websites rely on a range of aliases and masking techniques to  
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17 operate anonymously, and have engaged with a variety of companies and employed a variety of  
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19 tactics to help the owners of the sites evade detection. In my experience, the Websites’  
20  
21 concealment of the Defendants’ identities and locations are typical of businesses trafficking in  
22  
23 illegal devices.

24 8. The Websites’ listed registrars and other third-party services are as follows:

- 25 • GoDaddy.com, LLC, a registrar that also serves as a content delivery network, is  
26  
27 currently listed on the WHOIS database as the registrar and name server for  
28  
29 SXFLASHCARD.COM and TXSWITCH.COM.
- 30 • PDR Ltd. d/b/a PublicDomainRegistry.com, a registrar, is currently listed on the  
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32 WHOIS database as the registrar for AXIOGAME.COM.
- 33 • NameCheap, a registrar, was listed on the WHOIS database as the registrar for  
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35 FLASHCARDA.COM and NX-CARD.COM, and is currently listed as the registrar  
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37 of Defendants’ new domains AGRESU.COM, BRUJOON.COM, LOWBR.COM,  
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39 MATERPL.COM, and NERGED.COM. NameCheap is also the name server and  
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41 content delivery network of BRUJOON.COM.
- 42 • NameSilo, LLC, a registrar, is currently listed on the WHOIS database as the registrar  
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44 for Defendant Websites ANXCHIP.COM, MOD3DSCARDS.COM, and  
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USACHIPSS.COM. NameSilo is also the name server and content delivery network  
of MOD3DSCARDS.COM.
- Cloudflare, a content delivery network that also serves as a reverse proxy, pass-  
through security service (*i.e.*, a service that hides one’s identity), was listed in the

WHOIS database as the name server and content delivery network of ANXCHIP.COM, FLASHCARDA.COM, NX-CARD.COM, and USACHIPSS.COM, and is currently listed as the name server and content delivery network of Defendants' new domains AGRESU.COM, LOWBR.COM, MATERPL.COM, and NERGED.COM.

- Privacy Protect, LLC, a content delivery network that also serves as a reverse proxy, pass-through security service, is the name server, content delivery network, and registrant for AXIOGAME.COM.
- Domains By Proxy, LLC is a privacy protection (or "proxy") service, the sole purpose of which is to obscure one's identity. Domains By Proxy is listed in the WHOIS database as the registrant for SXFLASHCARD.COM, and TXSWITCH.COM.
- PrivacyGuardian is another privacy protection service. PrivacyGuardian was listed in the WHOIS database as the registrant for ANXCHIP.COM, MOD3DSCARDS.COM, and USACHIPSS.COM.
- WhoisGuard Protected ("WhoisGuard") is also a privacy protection service. WhoisGuard was listed in the WHOIS database as the registrant for FLASHCARDA.COM and NX-CARD.COM, and is currently listed as the registrant for Defendants' new domains AGRESU.COM, BRUJOON.COM, LOWBR.COM, MATERPL.COM, and NERGED.COM

#### Additional Defendant Address Information

9. All of the Websites have provided Chinese or Hong Kong addresses on shipping labels; however, most of these do not resolve to real world locations. Indeed, I directed my colleagues in Asia to investigate all of the Websites' Chinese or Hong Kong addresses and they confirmed that they are either fake or associated with third party fulfillment centers.

10. At one point, there were U.S. addresses associated with the shipping receipts from SXFLASHCARD.COM, TXSWITCH.COM, and USACHIPSS.COM, but our investigation revealed those addresses to be third party fulfillment centers and third party warehouses.

11. Our investigators placed multiple test purchases with certain of the Websites, and for each of those, the investigators received shipments bearing different addresses on the return labels from the same Website. All of the Websites have shipped materials from abroad.

Publicity and Actions Taken by Defendants Since The Filing of This Lawsuit

12. The filing of this lawsuit has generated significant publicity and press coverage in communities of people involved in gaming and hacking consoles, as well as in mainstream media. For example, articles discussing this litigation have appeared in more than 50 publications, including widely read publications such as Polygon, Ars Technica, TechRadar, Reddit, and Bloomberg Law, and publications widely read in the gaming and hacking communities, such as Nintendo Life, Nintendo Enthusiast, Game Revolution, and GBATEMP. True and correct copies of examples of these articles are attached as Exhibit 2.

13. GBATEMP, a popular hacking news website, published an article on this lawsuit, accurately quoting from Nintendo's Complaint and accurately stating the remedies Nintendo is seeking. That article alone has over 26,000 views and over 300 comments. *See* Exhibit 2, at 20–21.

14. An article in Game Revolution included an on-point explanation for why the devices at issue here are illegal under the DMCA, the law at issue in this suit: “Regardless of a user’s intent, these devices probably have to circumvent technological protections in place and likely violate the Digital Millenium [sic] Copyright Act.” *See* Exhibit 2, at 19.

15. In addition, in the time since this lawsuit was filed, five of the Websites have shut down and then relaunched under new domain names, a practice known as “domain hopping.”

16. Specifically, ANXCHIP.COM relaunched as LOWBR.COM; FLASHCARDA.COM relaunched as MATERPL.COM; MOD3DSCARDS.COM relaunched as BRUJOON.COM; NX-CARD.COM relaunched as AGRESU.COM; and USACHIPSS.COM relaunched as NERGED.COM. True and correct copies of screenshots of the relaunched sites are attached as Exhibit 3.

17. In addition to the work done by Jacqueline McMahon of Marksmen, as set forth in her declaration, I directed a California-based investigation service to complete test purchases from two of those new domains—AGRESU.COM (f/k/a NX-CARD.COM) and NERGED.COM

1 (f/k/a USACHIPSS.COM). The investigator was successful in completing preorder purchases,  
2 which were done in foreign currencies, referenced the prior domains, and had addresses  
3 associated with them from China. This is consistent with the fact that two of the original test  
4 purchases from NX-CARD.COM and USACHIPSS.COM also arrived from China or Hong  
5 Kong. Although a different test purchase from USACHIPSS.COM originated from a U.S.  
6 address, that address was revealed to be a third-party fulfillment center not connected to the  
7 Defendants.  
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13 18. In addition, after the filing of the lawsuit, Defendants operating three of the  
14 Websites emailed their customers explicitly stating that, “because of Nintendo lawsuit, our site  
15 will be changed to another domain” but that it would still be shipping orders “as usual.”  
16 Nintendo’s investigators received these emails. Others posted to chatrooms noting that they are  
17 shutting down their sites “[d]ue to the lawsuit of Nintendo” but will “open [] new site[s]” in  
18 “around 24 hours.” Defendants operating two other Websites posted to chatrooms that they were  
19 switching domain names “[d]ue to the lawsuit of Nintendo.” A true and correct copy of one of  
20 the three identical email communications is attached as Exhibit 4, and true and correct copies of  
21 the chatroom communications are attached as Exhibit 5.  
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29 19. And, although another Defendant, AXIOGAME.COM remains online, its  
30 operators have removed Team Xecuter products and it is no longer possible to purchase the  
31 Team Xecuter devices on the Website.  
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34 20. For the two other Websites that remain online—SXFLASHCARD.COM and  
35 TXSWITCH.COM—investigation has revealed that the individuals behind those Websites are  
36 linked to other authorized resellers and to Team Xecuter.  
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39 21. In addition to external news coverage, there has been a significant amount of  
40 online discussion within the communities that Defendants operate, including Team Xecuter’s  
41 official chat room, available at XECUTER.ROCKS. Various customers are going into Team  
42 Xecuter’s chatroom to discuss the lawsuit and inquire into where they can buy products in light  
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1 of the fact that certain Websites have been sued. Individuals have posted screenshots of the  
 2 filing of the complaint, and one noted that “[m]ost big vendors were listed in the law suit.”  
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4 22. Based on all of the above information, I believe it is reasonable to conclude that  
 5 Defendants are already aware of that lawsuit.  
 6

#### 7 Identification and Service Attempts

8  
 9 23. Nintendo and its investigators have exerted significant efforts to discover  
 10 Defendants’ identities and locations, including through methods such as test purchasing,  
 11 participating in online chat rooms, and utilizing enforcement tools.  
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13 24. For example, one of the Defendants previously operated a reseller website at  
 14 3DS-FLASHCARD.COM. Because “3DS” is a registered trademark of Nintendo and the name  
 15 of another Nintendo console, Nintendo filed a complaint with the World Intellectual Property  
 16 Organization (WIPO) under the Uniform Domain Name Dispute Resolution Policy  
 17 (UDRP). Nintendo was successful in getting the domain name transferred to itself, but  
 18 Defendants shortly thereafter reappeared at 3DS-FLASHCARD.CC. Nintendo again filed a  
 19 UDRP complaint and was again successful in getting the domain name transferred. However,  
 20 Defendants again simply reappeared at a different domain name; this time, ANXCHIP.COM,  
 21 which is one of the websites implicated in this suit. That domain does not list a physical address.  
 22 Nintendo filed a similar UDRP complaint against MOD3DSCARD.COM and was successful,  
 23 but the Defendants reappeared at MOD3DSCARDS.COM (with an ‘S’), one of the Websites at  
 24 issue here as well.  
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26 25. AGRESU.COM (f/k/a NX-CARD.COM) and NERGED.COM (f/k/a  
 27 USACHIPSS.COM) list U.S. addresses on their Websites, but those addresses are not connected  
 28 to or associated with the Defendants or their websites. I know this because I directed one of our  
 29 outside investigators to conduct a supplemental investigation into those two addresses. As set  
 30 forth in The Declaration of Jacqueline McMahon, the supplemental investigation found no  
 31 connection between those addresses and the Defendants or their Websites. Out of an abundance  
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1 of caution, I also directed that service be attempted on those two addresses, and those service  
2 attempts further confirmed that the addresses are not associated with the Defendants.  
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4 26. In light of the extensive investigations that I have conducted and supervised  
5 others in conducting, I believe it is reasonable to conclude that all Defendants reside outside the  
6 United States.  
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10 Ability to Reach Defendants

11 27. Defendants insist that people communicate with them only through email and  
12 online, and affirmatively encourage people to contact them at these email addresses. Our  
13 investigation has revealed the following email addresses associated with the Websites, and in  
14 many cases I understand that our investigators have personally communicated with Defendants  
15 at the listed addresses:  
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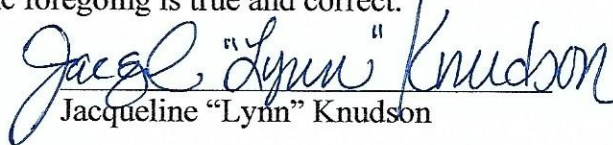


Defendant	Associated Email Addresses
Anxchip.com (now Lowbr.com)	<ul style="list-style-type: none"> <li><a href="mailto:sales@anxchip.com">sales@anxchip.com</a></li> <li><a href="mailto:admin@anxchip.com">admin@anxchip.com</a></li> <li><a href="mailto:pw-eef7316e3dab65ef3bf48d017150bd81@privacyguardian.org">pw-eef7316e3dab65ef3bf48d017150bd81@privacyguardian.org</a></li> <li><a href="mailto:9f933c74bc1b4a9a96d1f81c89092007.protect@whoisguard.com">9f933c74bc1b4a9a96d1f81c89092007.protect@whoisguard.com</a></li> <li><a href="mailto:abuse@cloudflare.com">abuse@cloudflare.com</a></li> <li><a href="mailto:abuse@namesilo.com">abuse@namesilo.com</a></li> <li><a href="mailto:abuse@namecheap.com">abuse@namecheap.com</a></li> <li><a href="mailto:support@mail.whoisguard.com">support@mail.whoisguard.com</a></li> </ul>
Axiogame.com	<ul style="list-style-type: none"> <li><a href="mailto:info@axiogame.com">info@axiogame.com</a></li> <li><a href="mailto:service@wintopay.com">service@wintopay.com</a></li> <li><a href="mailto:1603813102@qq.com">1603813102@qq.com</a></li> <li><a href="mailto:contact@privacyprotect.org">contact@privacyprotect.org</a></li> <li><a href="mailto:abuse-contact@publicdomainregistry.com">abuse-contact@publicdomainregistry.com</a></li> </ul>
Flashcarda.com (now Materpl.com)	<ul style="list-style-type: none"> <li><a href="mailto:admin@falshcarda.com">admin@falshcarda.com</a></li> <li><a href="mailto:e2083dfc01a340dcb9cbe4309c2963bc.protect@whoisguard.com">e2083dfc01a340dcb9cbe4309c2963bc.protect@whoisguard.com</a></li> <li><a href="mailto:9f933c74bc1b4a9a96d1f81c89092007.protect@whoisguard.com">9f933c74bc1b4a9a96d1f81c89092007.protect@whoisguard.com</a></li> <li><a href="mailto:abuse@cloudflare.com">abuse@cloudflare.com</a></li> <li><a href="mailto:abuse@namecheap.com">abuse@namecheap.com</a></li> <li><a href="mailto:support@mail.whoisguard.com">support@mail.whoisguard.com</a></li> </ul>
Mod3dscards.com (now Brujoon.com)	<ul style="list-style-type: none"> <li><a href="mailto:admin@mod3dscard.com">admin@mod3dscard.com</a></li> <li><a href="mailto:pierredupont838@yahoo.com">pierredupont838@yahoo.com</a></li> <li><a href="mailto:yellanna@yahoo.com">yellanna@yahoo.com</a></li> <li><a href="mailto:pw-9858d211ecf65d5b74c4d6d1d29acc7c@privacyguardian.org">pw-9858d211ecf65d5b74c4d6d1d29acc7c@privacyguardian.org</a></li> <li><a href="mailto:dabdd50dcc9c47c2976c659c23741615.protect@whoisguard.com">dabdd50dcc9c47c2976c659c23741615.protect@whoisguard.com</a></li> <li><a href="mailto:abuse@cloudflare.com">abuse@cloudflare.com</a></li> <li><a href="mailto:abuse@namesilo.com">abuse@namesilo.com</a></li> <li><a href="mailto:abuse@namecheap.com">abuse@namecheap.com</a></li> <li><a href="mailto:support@mail.whoisguard.com">support@mail.whoisguard.com</a></li> </ul>
Nx-card.com (now Agresu.com)	<ul style="list-style-type: none"> <li><a href="mailto:admin@nx-card.com">admin@nx-card.com</a></li> <li><a href="mailto:ac5c980a6c414b0e91beecf59852d1aa.protect@whoisguard.com">ac5c980a6c414b0e91beecf59852d1aa.protect@whoisguard.com</a></li> <li><a href="mailto:12508e0218f046f787f411e2a92c8ddc.protect@whoisguard.com">12508e0218f046f787f411e2a92c8ddc.protect@whoisguard.com</a></li> <li><a href="mailto:abuse@cloudflare.com">abuse@cloudflare.com</a></li> <li><a href="mailto:abuse@namecheap.com">abuse@namecheap.com</a></li> <li><a href="mailto:support@mail.whoisguard.com">support@mail.whoisguard.com</a></li> </ul>
Sxflashcard.com	<ul style="list-style-type: none"> <li><a href="mailto:spielking@outlook.com">spielking@outlook.com</a></li> <li><a href="mailto:qiumin2019@yeah.net">qiumin2019@yeah.net</a></li> <li><a href="mailto:sxflashcard@vip.163.com">sxflashcard@vip.163.com</a></li> <li><a href="mailto:sxflashcard@163.com">sxflashcard@163.com</a></li> <li><a href="mailto:sxflashcard.com@domainsbyproxy.com">sxflashcard.com@domainsbyproxy.com</a></li> <li><a href="mailto:abuse@godaddy.com">abuse@godaddy.com</a></li> </ul>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45	<table> <tr> <td>Txswitch.com</td><td> <ul style="list-style-type: none"> <li>• <a href="mailto:noreply@notice.mailhz.com">noreply@notice.mailhz.com</a></li> <li>• <a href="mailto:teamxecutersx@163.com">teamxecutersx@163.com</a></li> <li>• <a href="mailto:txswitch.com@domainsbyproxy.com">txswitch.com@domainsbyproxy.com</a></li> <li>• <a href="mailto:abuse@godaddy.com">abuse@godaddy.com</a></li> </ul> </td></tr> <tr> <td>Usachipss.com (now Nerged.com)</td><td> <ul style="list-style-type: none"> <li>• <a href="mailto:admin@usachipss.com">admin@usachipss.com</a></li> <li>• <a href="mailto:pw-4a6563c6dcb030493c219c6c14125e65@privacyguardian.org">pw-4a6563c6dcb030493c219c6c14125e65@privacyguardian.org</a></li> <li>• <a href="mailto:3dc9efc662604c7fa57e2936b15909ed.protect@whoisguard.com">3dc9efc662604c7fa57e2936b15909ed.protect@whoisguard.com</a></li> <li>• <a href="mailto:abuse@cloudflare.com">abuse@cloudflare.com</a></li> <li>• <a href="mailto:abuse@namesilo.com">abuse@namesilo.com</a></li> <li>• <a href="mailto:abuse@namecheap.com">abuse@namecheap.com</a></li> <li>• <a href="mailto:support@mail.whoisguard.com">support@mail.whoisguard.com</a></li> </ul> </td></tr> </table>	Txswitch.com	<ul style="list-style-type: none"> <li>• <a href="mailto:noreply@notice.mailhz.com">noreply@notice.mailhz.com</a></li> <li>• <a href="mailto:teamxecutersx@163.com">teamxecutersx@163.com</a></li> <li>• <a href="mailto:txswitch.com@domainsbyproxy.com">txswitch.com@domainsbyproxy.com</a></li> <li>• <a href="mailto:abuse@godaddy.com">abuse@godaddy.com</a></li> </ul>	Usachipss.com (now Nerged.com)	<ul style="list-style-type: none"> <li>• <a href="mailto:admin@usachipss.com">admin@usachipss.com</a></li> <li>• <a href="mailto:pw-4a6563c6dcb030493c219c6c14125e65@privacyguardian.org">pw-4a6563c6dcb030493c219c6c14125e65@privacyguardian.org</a></li> <li>• <a href="mailto:3dc9efc662604c7fa57e2936b15909ed.protect@whoisguard.com">3dc9efc662604c7fa57e2936b15909ed.protect@whoisguard.com</a></li> <li>• <a href="mailto:abuse@cloudflare.com">abuse@cloudflare.com</a></li> <li>• <a href="mailto:abuse@namesilo.com">abuse@namesilo.com</a></li> <li>• <a href="mailto:abuse@namecheap.com">abuse@namecheap.com</a></li> <li>• <a href="mailto:support@mail.whoisguard.com">support@mail.whoisguard.com</a></li> </ul>
Txswitch.com	<ul style="list-style-type: none"> <li>• <a href="mailto:noreply@notice.mailhz.com">noreply@notice.mailhz.com</a></li> <li>• <a href="mailto:teamxecutersx@163.com">teamxecutersx@163.com</a></li> <li>• <a href="mailto:txswitch.com@domainsbyproxy.com">txswitch.com@domainsbyproxy.com</a></li> <li>• <a href="mailto:abuse@godaddy.com">abuse@godaddy.com</a></li> </ul>				
Usachipss.com (now Nerged.com)	<ul style="list-style-type: none"> <li>• <a href="mailto:admin@usachipss.com">admin@usachipss.com</a></li> <li>• <a href="mailto:pw-4a6563c6dcb030493c219c6c14125e65@privacyguardian.org">pw-4a6563c6dcb030493c219c6c14125e65@privacyguardian.org</a></li> <li>• <a href="mailto:3dc9efc662604c7fa57e2936b15909ed.protect@whoisguard.com">3dc9efc662604c7fa57e2936b15909ed.protect@whoisguard.com</a></li> <li>• <a href="mailto:abuse@cloudflare.com">abuse@cloudflare.com</a></li> <li>• <a href="mailto:abuse@namesilo.com">abuse@namesilo.com</a></li> <li>• <a href="mailto:abuse@namecheap.com">abuse@namecheap.com</a></li> <li>• <a href="mailto:support@mail.whoisguard.com">support@mail.whoisguard.com</a></li> </ul>				

I declare under penalty of perjury that the foregoing is true and correct.

Executed: June 3, 2020

  
Jacqueline "Lynn" Knudson